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Attorney for Plaintiff

OTTO ARCHIVE, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OTTO ARCHIVE, LLC,

Civil Action No.

Plaintiff,

V.

**PREMIER FANCHISE
MANAGEMENT d/b/a PREMIER
POOLS & SPAS,**

Defendant.

Plaintiff OTTO Archive, LLC (“Plaintiff”) sues defendant Premier Franchise Management d/b/a Premier Pools & Spas (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the State of New York with its principal place of business located in New York County, New York.

2. Defendant is a corporation organized and existing under the laws of the State of Nevada with its principal place of business located at 5748 Avenida Robles, Granite Bay, CA 95746. Defendant's agent for service of process is Brian Porter, 4080 Cavitt Stallman, Ste. 200, Granite Bay, CA 95746.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to
28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because it has maintained sufficient minimum contacts with this State such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “The Ninth Circuit has interpreted Section 1400(a) to mean that venue is proper in any judicial district in which the defendant would be amenable to personal

1 jurisdiction.” Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-
2 LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing
3 Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir.
4 2010)).

5 **FACTS**

6 **I. Plaintiff’s Business**

7 6. Plaintiff is a global photography distribution network representing
8 over 30 master contemporary photographers. Plaintiff licenses design,
9 architectural and interior imagery of preeminent architects and designers. Its
10 collection also features unique locations, landscapes, and industrial images.

11 7. With an unparalleled focus on customer focus and premiere imagery,
12 Plaintiff’s commitment to clients and photographers sets it apart from other
13 agencies.

14 8. Plaintiff provides the environment, business sensibilities, and
15 experience within syndication that its clients seek as an alternative to traditional
16 corporate agencies.

17 9. Plaintiff maintains a commercial website
18 (<https://www.ottoarchive.com/>) which describes the photography services offered
19 by Plaintiff, offers a list of the photographers it represents including a sample of
20 some of their imagery, and invites prospective customers to contact Plaintiff to

1 arrange for licensing

2 **II. The Work at Issue in this Lawsuit**

3 10. Trevor Tondro and Roger Davies are some of the many renowned
4 photographers represented by Plaintiff.

5 11. Mr. Tondro is an interior, lifestyle, portrait, and still-life photographer
6 based in Santa Barbara, CA. His work can be viewed on his professional website
7 (at <https://www.trevortondro.com/>). Mr. Tondro lived abroad in Paris and spent
8 two and a half years living in Latin America before studying photography at
9 Parson's School of Design. Upon completion of his studies, he landed coveted
10 apprenticeships with Philip-Lorca diCorcia and Martyn Thompson learning not
11 only the professionalism and commercial side of photography but also the dual
12 perspective of lighting and contrasts in photography. Mr. Tondro's work appears
13 regularly in *Architectural Digest*, *T Magazine*, *Elle Décor*, *Town & Country*,
14 *Veranda*, *House Beautiful*, and *Martha Stewart*. His commercial clients include
15 Celine, Ralph Lauren, West Elm, Bloomingdales, Proper Hotel, Design Within
16 Reach, Thompson Hotels, Waterworks, Sonos, La Cornue, Natori, GOOP, Wynn
17 Hotel Group, Restoration Hardware, Air Bnb, Brizo, USM, St. Charles Kitchen,
18 Frank & Eileen, Farrow & Ball, and Rug Co.

19 12. Mr. Davies is an English born photographer living in Los Angeles.
20 His work can be viewed on Plaintiff's commercial website (see

<https://www.ottoarchive.com/C.aspx?VP3=SearchResult&VBID=2S6XUVNPFTTCC>). Mr. Davies specializes in shooting interiors and portraits for editorial, private, and commercial assignments. His first monograph, *Beyond the Canyon: Inside Epic California Homes*, was published by Monacelli and is a collection of homes photographed all over California. From Elton John and David Furnish's art-filled Hollywood residence to Mark Haddawy's cabin in the cliffs of Big Sur, the book showcases California design at its best. With a foreword by Drew Barrymore, the book is filled with images of projects by John Lautner, Tadao Ando, Michael Smith, and more, scattered throughout with inside stories from a photographer's point of view.

The First Photograph

13. In 2018, Mr. Tondro created a professional photograph of a bohemian styled home in Santa Monica, California titled “OT1202552” (the “First Photograph”). A copy of the First Photograph is displayed below:



14. The First Photograph was registered by Mr. Tondro with the Register of Copyrights on July 20, 2022 and was assigned Registration No. VA 2-312-073. A true and correct copy of the Certificate of Registration pertaining to the First Photograph is attached hereto as **Exhibit “A.”**

15. Mr. Tondro is the owner of the First Photograph and has remained the owner at all times material hereto.

The Second Photograph

16. In 2013, Mr. Davies created a professional photograph of an infinity pool in Los Angeles, California titled “OT1238734” (the “Second Photograph”). A copy of the Second Photograph is displayed below:



The Third Photograph

17. In 2013, Mr. Davies created a professional photograph of a celebrity home in Los Angeles, California titled “OT1238717” (the “Third Photograph”).

1 A copy of the Third Photograph is displayed below:



15 18. The Second Photograph and Third Photograph were registered by Mr.
16 Davies with the Register of Copyrights on July 15, 2020 and were assigned
17 Registration No. VA 2-213-445. A true and correct copy of the Certificate of
18 Registration pertaining to the Second Photograph and Third Photograph is
19 attached hereto as **Exhibit “B.”**

21 **The Fourth Photograph**

22 19. In 2015, Mr. Davies created a professional photograph of a celebrity
23 kitchen in Calabasas, California titled “OT1237847” (the “**Fourth Photograph**”).

25 A copy of the Fourth Photograph is displayed below:



The Fifth Photograph

20. In 2015, Mr. Davies created a professional photograph of a celebrity living room with Middle Eastern décor titled “OT1237872” (the “Fifth Photograph”). A copy of the Fifth Photograph is displayed below:



21. The Fourth Photograph and Fifth Photograph were registered by Mr.

1 Davies with the Register of Copyrights on September 22, 2021 and were assigned
2 Registration No. VA 2-270-413. A true and correct copy of the Certificate of
3 Registration pertaining to the Fourth Photograph and Fifth Photograph is attached
4 hereto as **Exhibit “C.”**

5

The Sixth Photograph

6

7 22. In 2011, Mr. Davies created a professional photograph of a celebrity
8 luxury home in Calabasas, California titled “OT1241832” (the “Sixth
9 Photograph”). A copy of the Sixth Photograph is displayed below:



10

11 23. The Sixth Photograph was registered by Mr. Davies with the Register
12 of Copyrights on August 26, 2021 and was assigned Registration No. VA 2-269-
13

1 757. A true and correct copy of the Certificate of Registration pertaining to the
2 Sixth Photograph is attached hereto as **Exhibit “D.”**
3

4 24. The First Photograph, Second Photograph, Third Photograph, Fourth
5 Photograph, Fifth Photograph, and Sixth Photograph are collectively referred to
6 herein as the **“Work.”**

7 25. For all times relevant to this action, Plaintiff and the above-named
8 photographer(s) were parties to one or more written agreements whereby such
9 photographer(s) conveyed to Plaintiff certain exclusive rights in the Work,
10 including but not limited to the exclusive right to reproduce the Work in copies
11 and the exclusive right to distribute copies of the Work to the public by sale and/or
12 licensing. Such written agreement(s) likewise convey the exclusive right to
13 pursue any infringements of the Work, whether such infringements arose prior to
14 execution of the written agreement(s) or thereafter. As such, Plaintiff is entitled
15 to institute and maintain this action for copyright infringement. See 17 U.S.C. §
16 501(b).
17

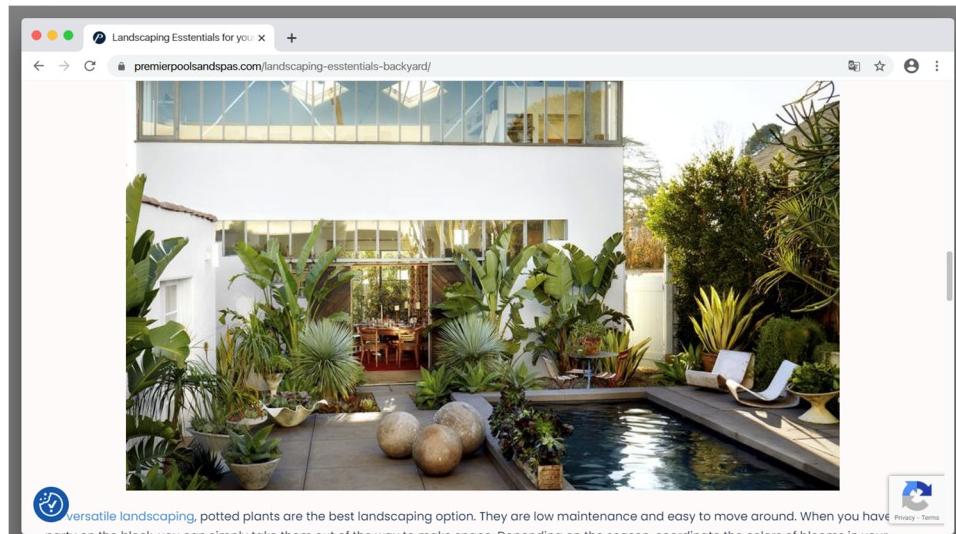
18 **III. Defendant’s Unlawful Activities**

20 26. Defendant runs a franchise operation that specializes in servicing and
21 building residential pools and spas across the United States, with more than 100
22 locations nationwide.
23

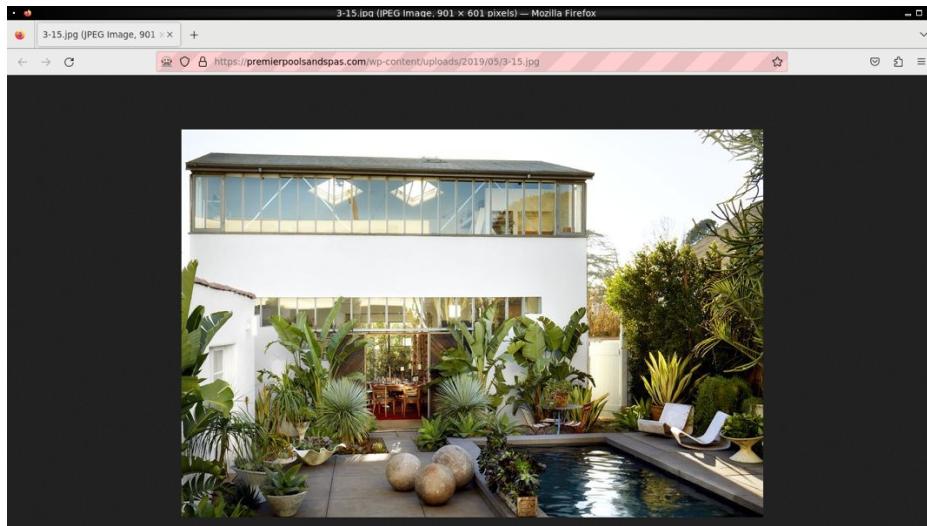
25 27. Defendant advertises/markets its business through its websites

1 (<https://premierpoolsfranchise.com/>) and <https://premierpoolsandspas.com/>),
2 social media (e.g., <https://www.facebook.com/premierpools/>,
3 <https://www.youtube.com/c/premierpools>,
4 <https://www.instagram.com/premierpoolsandspas/>,
5 <https://www.tiktok.com/@premierpoolsandspas>,
6 and
7 <https://www.pinterest.com/premierpool/>), and other forms of advertising.
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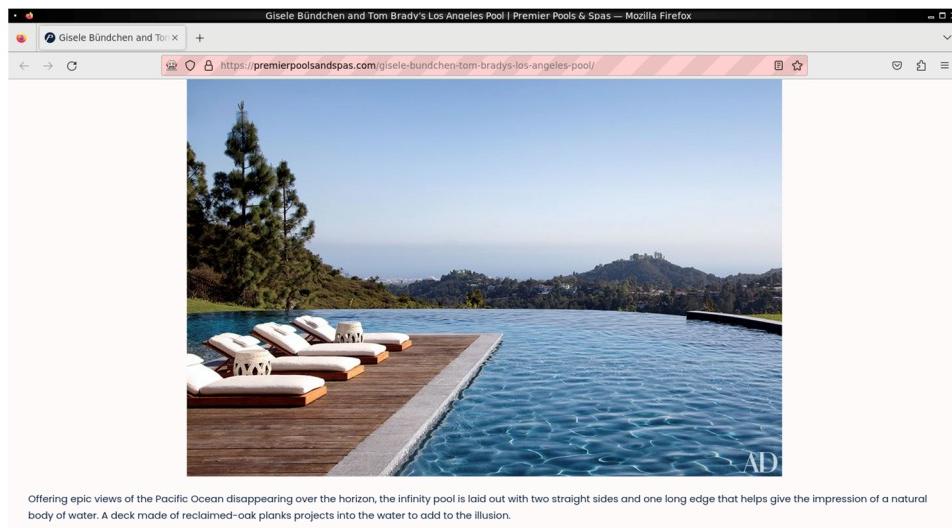
9 28. In May 2019 (before Mr. Tondro's above-referenced copyright
10 registration of the First Photograph), Defendant displayed and/or published the
11 First Photograph on its website, webpage, and/or social media
12 (at <https://premierpoolsandspas.com/landscaping-esstentials-backyard/>):
13



22 (at <https://premierpoolsandspas.com/wp-content/uploads/2019/05/3-15.jpg>):
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24
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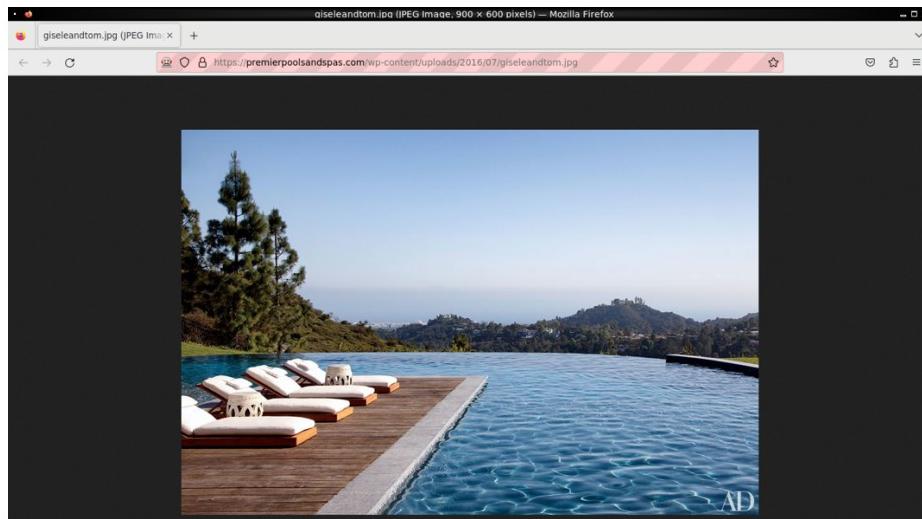


29. In July 2016 (before Mr. Davies' above-referenced copyright
10 registration of the Second Photograph), Defendant displayed and/or published the
11 Second Photograph on its website, webpage, and/or social media
12 (at <https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-pool/>):

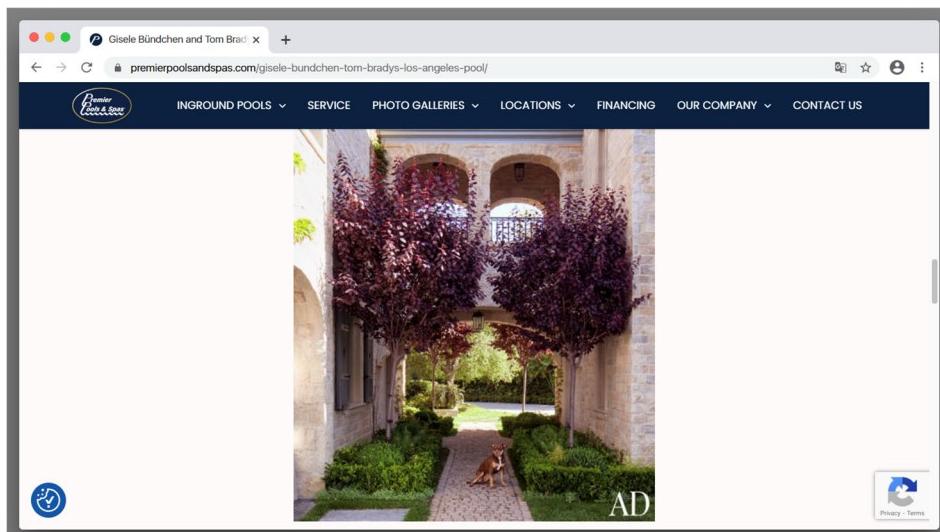


24 (at <https://premierpoolsandspas.com/wp-content/uploads/2016/07/gisele->

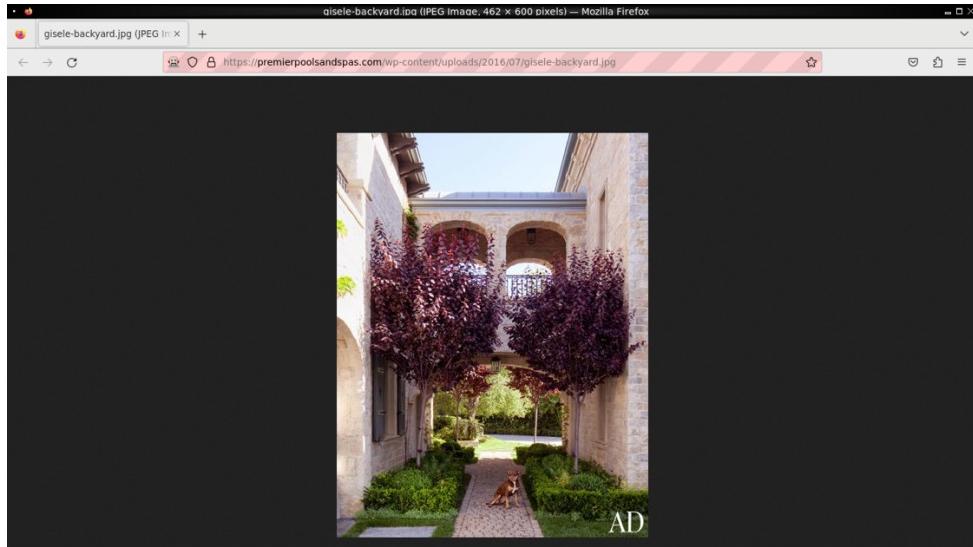
1 backyard.jpg):



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10 30. In July 2016 (before Mr. Davies' above-referenced copyright
11 registration of the Third Photograph), Defendant displayed and/or published the
12 Third Photograph on its website, webpage, and/or social media
13
14 (at [https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-](https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-pool/)
15 [pool/](https://premierpoolsandspas.com/gisele-bundchen-tom-bradys-los-angeles-pool/)):
16

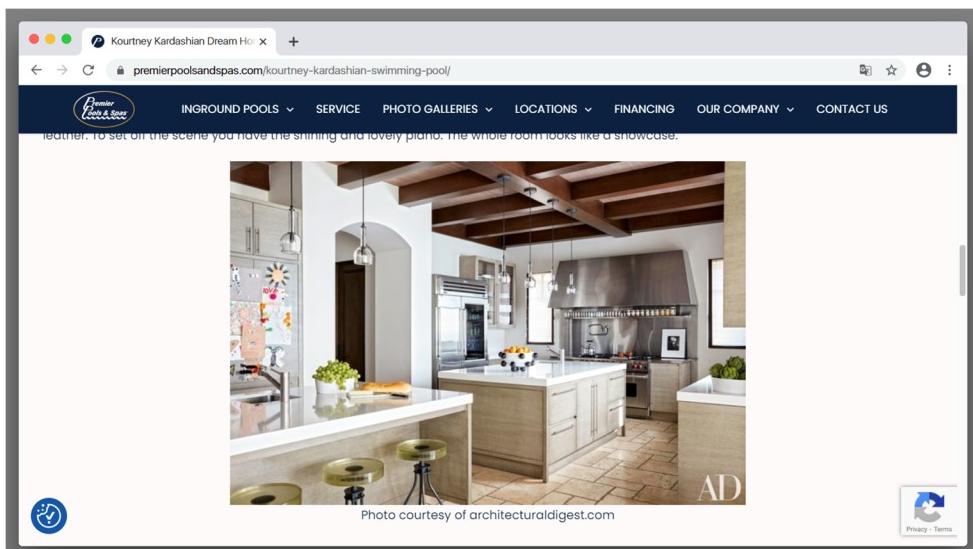


1 (at <https://premierpoolsandspas.com/wp-content/uploads/2016/07/gisele-backyard.jpg>):

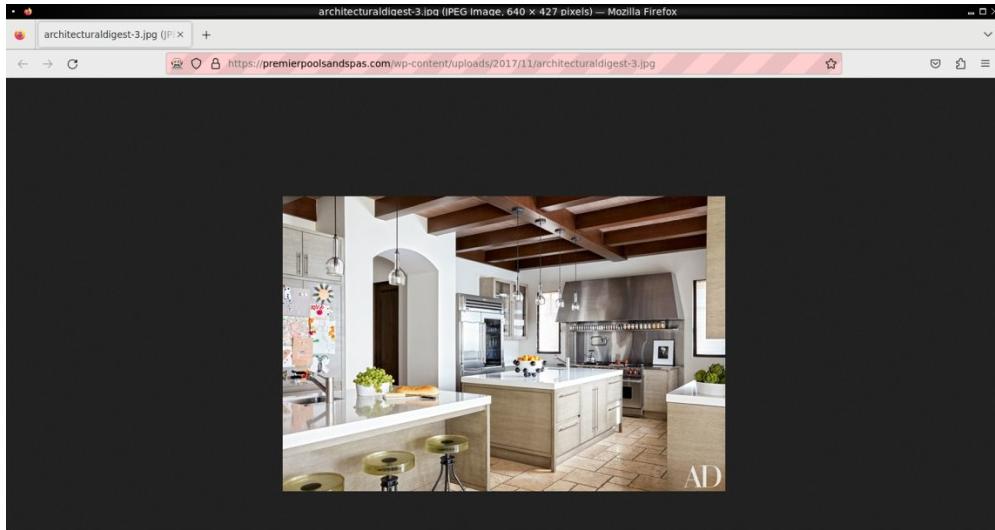


12 31. In November 2017 (before Mr. Davies' above-referenced copyright
13 registration of the Fourth Photograph), Defendant displayed and/or published the
14 Fourth Photograph on its website, webpage, and/or social media

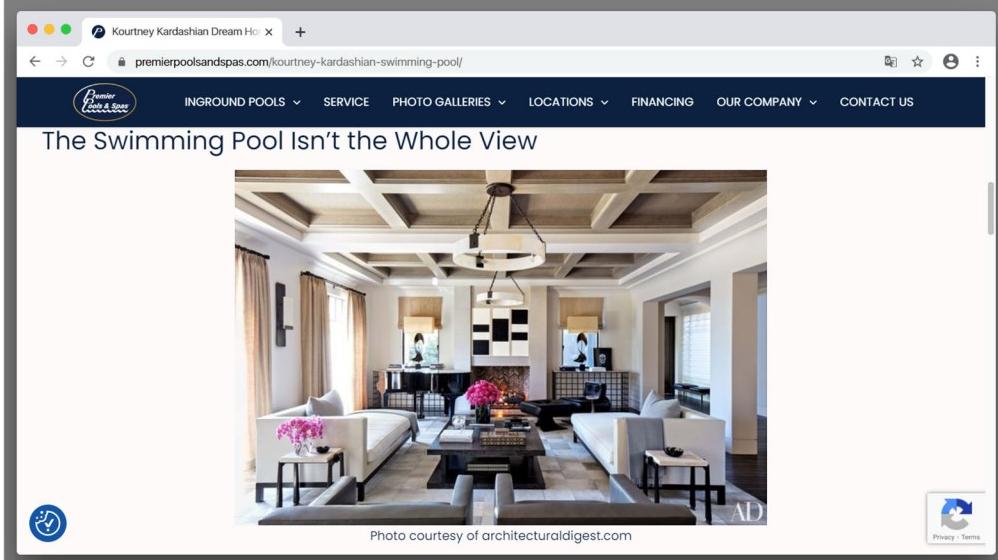
16 (at <https://premierpoolsandspas.com/kourtney-kardashian-swimming-pool/>):



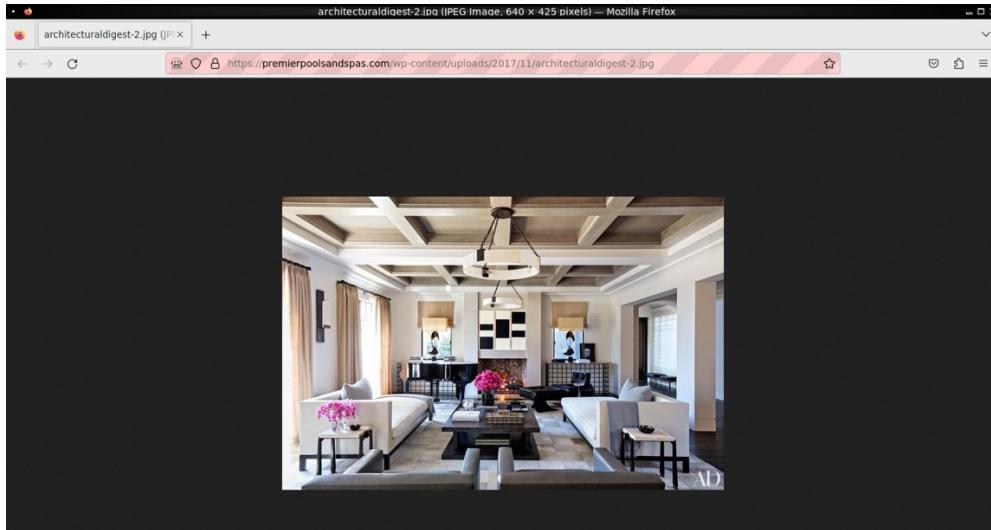
1 (at [https://premierpoolsandspas.com/wp-
2 content/uploads/2017/11/architecturaldigest-3.jpg](https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-3.jpg)):
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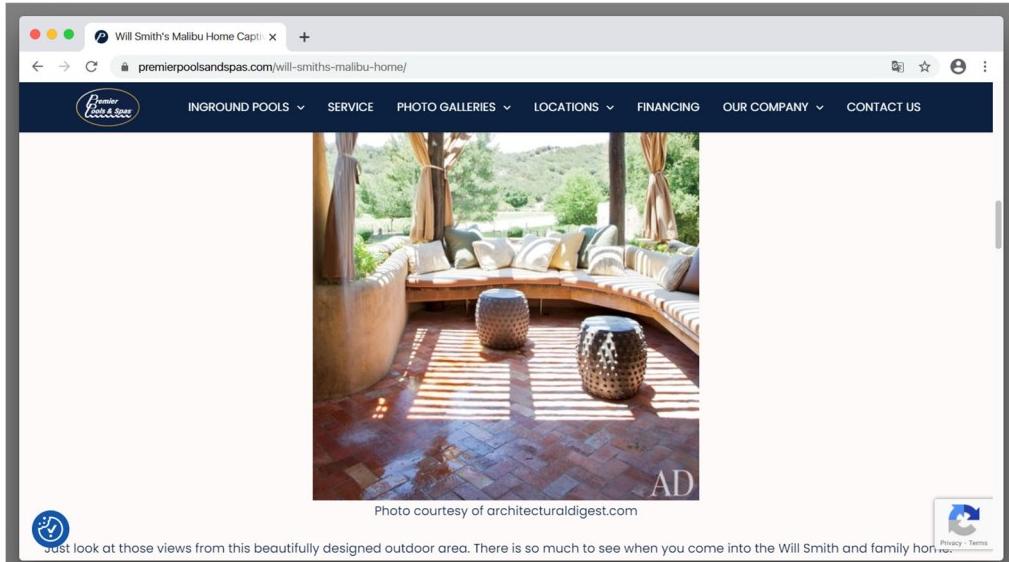
12 32. In November 2017 (before Mr. Davies' above-referenced copyright
13 registration of the Fifth Photograph), Defendant displayed and/or published the
14 Fifth Photograph on its website, webpage, and/or social media
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16 (at <https://premierpoolsandspas.com/kourtney-kardashian-swimming-pool/>):



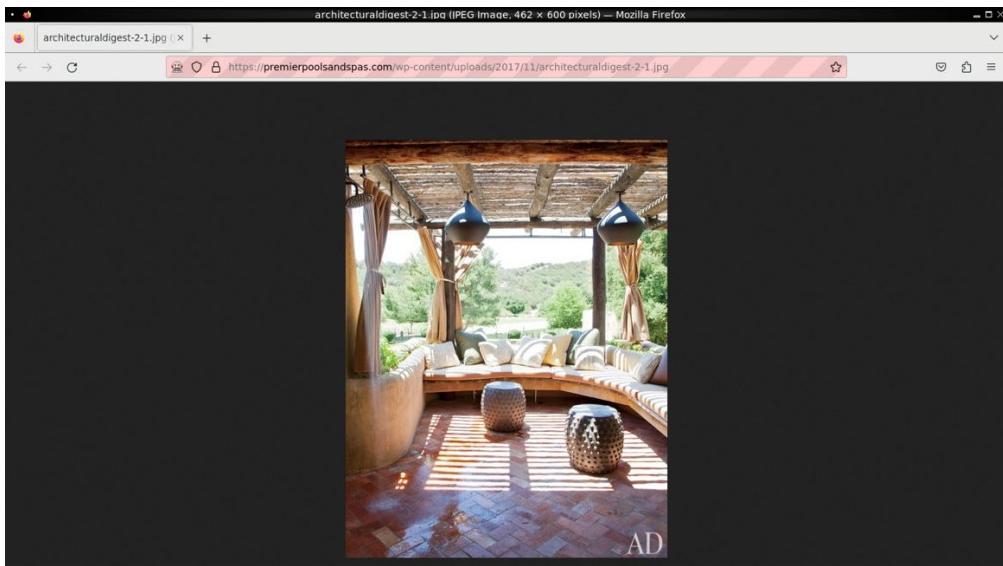
1 (at [https://premierpoolsandspas.com/wp-
2 content/uploads/2017/11/architecturaldigest-2.jpg](https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-2.jpg)):
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12 33. In November 2017 (before Mr. Davies' above-referenced copyright
13 registration of the Sixth Photograph), Defendant displayed and/or published the
14 Sixth Photograph on its website, webpage, and/or social media
15
16 (at <https://premierpoolsandspas.com/will-smiths-malibu-home/>):



1 (at [https://premierpoolsandspas.com/wp-
2 content/uploads/2017/11/architecturaldigest-2-1.jpg](https://premierpoolsandspas.com/wp-content/uploads/2017/11/architecturaldigest-2-1.jpg)):
3
4



12 34. A true and correct copy of screenshots of Defendant's website,
13 webpage, and/or social media, displaying the copyrighted Work, is attached
14 hereto as **Exhibit “E.”**
15

16 35. Defendant is not and has never been licensed to use or display the
17 Work. Defendant never contacted Plaintiff to seek permission to use the Work in
18 connection with its website, webpage, social media, or for any other purpose.
19

20 36. Defendant utilized the Work for commercial use.
21

22 37. Upon information and belief, Defendant located a copy of the Work
23 on the internet and, rather than contact Plaintiff to secure a license, simply copied
24 the Work for its own commercial use.
25

38. Through its ongoing diligent efforts to identify unauthorized use of its

1 photographs, Plaintiff discovered Defendant's unauthorized use/display of the
2 Work on April 21, 2023. Following Plaintiff's discovery, Plaintiff notified
3 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable
4 to negotiate a reasonable license for the past/existing infringement of the Work.
5

6 39. All conditions precedent to this action have been performed or have
7 been waived.

8 **COUNT I – COPYRIGHT INFRINGEMENT**

9 10 40. Plaintiff re-alleges and incorporates paragraphs 1 through 39 as set
11 forth above.

12 41. Each photograph comprising the Work is an original work of
13 authorship, embodying copyrightable subject matter, that is subject to the full
14 protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

15 42. Mr. Tondro owns a valid copyright in the First Photograph, having
16 registered such photograph with the Register of Copyrights.

17 43. Mr. Davies owns a valid copyright in the Second Photograph, Third
18 Photograph, Fourth Photograph, Fifth Photograph, and Sixth Photograph having
19 registered such photographs with the Register of Copyrights.

20 44. Plaintiff has standing to bring this lawsuit and assert the claim(s)
21 herein as it has sufficient rights, title, and interest to such copyrights (as Plaintiff
22

1 was conveyed certain exclusive rights to reproduce and distribute the Work by the
2 subject photographer(s)).
3

4 45. Mr. Tondro entered into a written agreement with Plaintiff whereby
5 such photographer transferred to Plaintiff the exclusive right to distribute copies
6 of the copyrighted work to the public by sale or other transfer of ownership, or by
7 rental, lease, or lending. 17 U.S.C. § 106(3).
8

9 46. Mr. Davies entered into a written agreement with Plaintiff whereby
10 such photographer transferred to Plaintiff the exclusive right to distribute copies
11 of the copyrighted work to the public by sale or other transfer of ownership, or by
12 rental, lease, or lending. 17 U.S.C. § 106(3).
13

14 47. Such written agreements convey at least one of the exclusive rights
15 set forth in 17 U.S.C. § 106.
16

17 48. The written agreement provides sole and exclusive rights to Plaintiff
18 to license the photographer's work at prices to be determined by Plaintiff.
19

20 49. As a result of Plaintiff's reproduction, distribution, and public display
21 of the Work, Defendant had access to the Work prior to its own reproduction,
22 distribution, and public display of the Work on its website, webpage, and/or social
23 media.
24

25 50. Defendant reproduced, distributed, and publicly displayed the Work
without authorization from Plaintiff.

51. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501. Defendant's infringement was either direct, vicarious, and/or contributory.

52. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

53. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Work, which amounts shall be proven at trial.

54. Defendant's conduct has caused, and any continued infringing conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

a. A declaration that Defendant has infringed Plaintiff's copyrights in the Work:

- b. An award of actual damages and disgorgement of profits as the Court deems proper or, at Plaintiff's election, an award of statutory damages for each photograph comprising the Work;
 - c. Awarding Plaintiff its costs pursuant to 17 U.S.C. § 505;
 - d. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
 - e. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and
 - f. For such other relief as the Court deems just and proper.

DATED: December 19, 2024.

COPYCAT LEGAL PLLC

By: /s/ Lauren M. Hausman
Lauren M. Hausman, Esq.
Attorney for Plaintiff
OTTO ARCHIVE, LLC